

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 20 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JEFF M. WELCH,	)	
	)	2 CA-CV 2011-0056
Plaintiff/Appellant,	)	DEPARTMENT A
	)	
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
ARIZONA DEPARTMENT OF	)	Rule 28, Rules of Civil
CORRECTIONS,	)	Appellate Procedure
	)	
Defendant/Appellee.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV201004738

Honorable Craig A. Raymond, Judge Pro Tempore

AFFIRMED

Jeff M. Welch

Florence  
In Propria Persona

Thomas C. Horne, Arizona Attorney General  
By Paul E. Carter

Tucson  
Attorneys for Defendant/Appellee

B R A M M E R, Judge.

¶1 Jeff M. Welch, an inmate with the Arizona Department of Corrections (ADOC), appeals from the trial court's decision to decline to accept jurisdiction over his petition for special action. He argues that, according to A.R.S. § 31-254 and ADOC

regulations, he is entitled to an increase in his hourly pay as well as back pay for time worked at the lesser rate. We affirm.

### **Factual and Procedural Background**

¶2 The relevant facts are not in dispute. Welch filed multiple complaints through the inmate grievance system, first arguing that, according to prison policy, his work compensation both should be and should have been \$.40 instead of \$.35 per hour and that he was entitled to back pay for the time he had worked at the lesser rate. He later argued that his work compensation should have been raised from \$.40 to \$.45 per hour. ADOC eventually raised his hourly compensation from \$.35 to \$.40 but denied his back pay and other requests. Welch appealed and the ADOC director affirmed the decisions.

¶3 Welch filed a complaint in the trial court against the director and multiple employees of ADOC, seeking modification of his pay and back pay. The court determined the complaint should be treated as one for a special action.<sup>1</sup> It directed the clerk to complete service of process on the ADOC and required Welch to serve the individual defendants, which he failed to do. The state moved to dismiss the action arguing Welch had failed to state a claim upon which relief may be granted, the complaint made no claim against the state, the claims themselves were not urgent, the ADOC was immune, and the parties named in the complaint were not served. The court declined to

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<sup>1</sup>Welch appears to disagree with the trial court's decision to treat his complaint as one for a special action; however, the court's determination was proper under Rule 3(a), Ariz. R. P. Spec. Actions (whether defendant failed "to perform a duty required by law" question properly raised by special action).

accept jurisdiction over the special action and dismissed it without prejudice. Before a final judgment was entered, Welch appealed. The court later entered a final judgment dismissing the action.<sup>2</sup>

### Discussion

¶4 On appeal from a special action, we conduct a two-part review of the trial court's ruling, first determining whether the court "in its discretion assumed jurisdiction of the merits of the claim." *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). If the court did not assume jurisdiction of the claim, as in this case, "then there exists no trial court determination for the appellate court to review, and the sole issue on appeal is whether the trial court abused its discretion when it declined to accept jurisdiction."<sup>3</sup> *Id.* "The acceptance of special action jurisdiction is highly discretionary," *Harris Trust Bank of Ariz. v. Superior Court*, 188 Ariz. 159, 162, 933 P.2d 1227, 1230 (App. 1996), and we will uphold the denial of special action relief for any valid reason disclosed by the record, *State ex rel. Ariz. Dep't of Econ. Sec. v. Kennedy*, 143 Ariz. 341, 345, 693 P.2d 996, 1000 (App. 1985).

¶5 Section 31-201.01(L), A.R.S., states:

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<sup>2</sup>Although Welch's notice of appeal was premature, *see* Ariz. R. Civ. App. P. 9(a), we have jurisdiction over the appeal. *See Barassi v. Matison*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981) (premature appeal in which appellee not prejudiced and in which subsequent final judgment entered over which jurisdiction may be exercised need not be dismissed); *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, ¶ 37, 132 P.3d 1187, 1195 (2006) (*Barassi* exception applies if decision could not change and only remaining task is ministerial).

<sup>3</sup>Welch does not allege explicitly the court abused its discretion in declining to accept jurisdiction of his special action. *See* Ariz. R. Civ. App. P. 13(a)(6). However, we infer from his brief that he challenges its decision to do so.

A person who is convicted of a felony offense and who is incarcerated while awaiting sentence or while serving a sentence imposed by a court of law may not bring a cause of action seeking damages or equitable relief from the state or its political subdivisions, agencies, officers or employees for injuries suffered while in the custody of the state or its political subdivisions or agencies unless the complaint alleges specific facts from which the court may conclude that the plaintiff suffered serious physical injury or the claim is authorized by a federal statute.

The statute not only applies to claims for physical injuries but also limits an inmate's ability to seek damages for purely monetary injuries. *See Tripati v. State*, 199 Ariz. 222, ¶¶ 1, 9, 16 P.3d 783, 785-86 (App. 2000) (holding inmate alleging loss of property barred from bringing action under § 31-201.01(L)). And, although Welch asserts he sued only six individuals, and not the state, the statute also protects the state's "officers or employees."

¶6 Welch failed to allege facts from which the trial court could have found he either had suffered serious physical injury or had stated a claim authorized by federal statute.<sup>4</sup> Serious physical injury is defined as "impairment of physical condition that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ." § 31-201.01(N)(2). Welch's allegations relate solely to his pay rate under the

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<sup>4</sup>Although "a pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers,'" Welch does not allege any set of facts that could be construed as alleging serious physical injury or as stating claims authorized by federal statute. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976), quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Moreover, pro se litigants are held to the same standards as attorneys. *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, ¶ 16, 17 P.3d 790, 793 (App. 2000).

ADOC's inmate work incentive pay plan and do not satisfy the statute's "serious physical injury" requirement. *See Tripathi*, 199 Ariz. 222, ¶ 9, 16 P.3d at 786. Welch also failed to bring a claim authorized by federal statute.<sup>5</sup> For example, Welch did not assert his constitutional rights had been violated. *See* 42 U.S.C. § 1983.

¶7 Because Welch did not allege facts from which the trial court could conclude he had suffered serious physical injury or had stated a claim authorized by federal statute, he failed to state a claim under § 31-201.01(L). Therefore, the court did not abuse its discretion in declining to accept special action jurisdiction and dismissing the action.

#### **Disposition**

¶8 For the foregoing reasons, we affirm.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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JOSEPH W. HOWARD, Chief Judge

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VIRGINIA C. KELLY, Judge

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<sup>5</sup>It also appears Welch did not serve the individual defendants, and therefore any claims against them required dismissal. *See* Ariz. R. Civ. P. 4.1(b) (party procuring service responsible for service of summons and pleading); Ariz. R. Civ. P. 4(i) (if service of summons and complaint not made within 120 days, court shall dismiss action without prejudice).